

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 DAVID PALLIES,

10 Plaintiff,

11 v.

12 THE BOEING COMPANY,

13 Defendant.
14

Case No. 2:16-CV-1437-RSL

ORDER GRANTING IN
PART PLAINTIFF'S
MOTION FOR
RECONSIDERATION

15 This matter comes before the Court on plaintiff David Pallies' motion for
16 reconsideration. Dkt. #63. The Court granted summary judgment in favor of defendant, the
17 Boeing Company, on June 29, 2018. Dkt. #61. Plaintiff timely filed this motion seeking
18 reconsideration of three issues. On September 17, 2018, the Court denied the motion as to the
19 first two issues, but reserved ruling on the third. Dkt. #67. Boeing filed further briefing in
20 opposition to plaintiff's motion for reconsideration on September 26, 2018. Dkt. #68.

21 **BACKGROUND**

22 This case stems from plaintiff's development of a neurological disorder that eventually
23 prevented him from doing his job at Boeing. Plaintiff started working with Boeing on December
24 2, 2010. Dkt. #1 at ¶3.1. He was hired as a hook tender to operate cranes. *Id.* at ¶3.2. On May
25 30, 2014, he was diagnosed by Dr. Roger Sharf with probable Charcot-Marie Tooth disease.
26 Sharf Decl. (Dkt. #23) at ¶4. Various events occurred that are not relevant to this motion.
27 Eventually, on January 13, 2016, Boeing designated plaintiff as "Medically Unable to Perform
28

ORDER GRANTING IN PART PLAINTIFF'S
MOTION FOR RECONSIDERATION - 1

1 Work Assignment” and laid him off. Dkt. #35-2 at 187. After his termination, a crane scheduler
2 position became available in Boeing’s Industrial Engineering Department. Cowell Decl. (Dkt.
3 #40) at ¶2. This was not offered to plaintiff. Pallies Decl. (Dkt. #38) at ¶18. On September 12,
4 2016, plaintiff filed a Complaint against Boeing for violations of the Americans with
5 Disabilities Act, see 42 U.S.C. § 12101 *et seq.*, and Washington’s Law Against Discrimination,
6 see RCW 49.60.030 *et seq.* Dkt. #1 at ¶¶ 4.0-5.3. He specifically alleged that Boeing
7 discriminated against him by failing to place him in a position at Boeing after he was medically
8 laid off. *Id.* at ¶5.3.

9 Boeing filed a motion for summary judgment on July 5, 2017. Dkt. #35. In his response,
10 plaintiff argued *inter alia* that an employer’s obligation to accommodate an employee extends
11 beyond the employee’s termination. Dkt. #37 at 21-22. He cited to Dean v. Municipality of
12 Metro. Seattle-Metro, 104 Wn.2d 627, 628 (1985), but no additional authority. See Dkt. #61 at
13 9. The Court found that, “[c]ontrary to [plaintiff]’s suggestion, [Dean] involved positions that
14 opened while the plaintiff was still employed and the Dean decision did not create an obligation
15 for employers to notify laid-off employees of vacancies that arise after termination.” *Id.* The
16 Court granted summary judgment in favor of Boeing. In his motion for reconsideration, plaintiff
17 advised the Court of the Washington Court of Appeals’ decision in Wheeler v. Catholic
18 Archdiocese of Seattle, 65 Wn. App. 552 (1992), rev’d on other grounds, 124 Wn. 2d 634
19 (1994) and argued that summary judgment should accordingly be reversed on the issue of post-
20 termination accommodation.

21 DISCUSSION

22 **A. Legal Standard**

23 Motions for reconsideration are generally disfavored. LCR 7(h). The Court will
24 “ordinarily deny such motions in the absence of a showing of manifest error in the prior ruling
25 or a showing of new facts or legal authority which could not have been brought to its attention
26 earlier with reasonable diligence.” *Id.*

1 The Court grants summary judgment “if the movant shows that there is no genuine
2 dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed.
3 R. Civ. P. 56(a). Summary judgment must be denied if, viewing the evidence in the light most
4 favorable to the non-moving party, there are genuine issues of material fact. Nolan v. Heald
5 Coll., 551 F.3d 1148, 1154 (9th Cir. 2009) (quoting Leisek v. Brightwood Corp., 278 F.3d 895,
6 898 (9th Cir. 2002) (internal quotation marks omitted)).

7 **B. Employer’s Duty to Accommodate**

8 Under Washington law, it is an unfair practice for any employer “[t]o discharge or bar
9 any person from employment because of age, sex, marital status, sexual orientation, race, creed,
10 color, national origin, honorably discharged veteran or military status, or the presence of any
11 sensory, mental, or physical disability or the use of a trained dog guide or service animal by a
12 person with a disability.” RCW § 49.60.180.

13
14 The elements of a claim of handicap discrimination are: “(1) the plaintiff is handicapped;
15 (2) he or she was qualified to fill a vacant position; and (3) the employer failed to take
16 affirmative measures to make known such job opportunities to the plaintiff and to determine
17 whether he or she was in fact qualified for those positions. The third element is known as the
18 employer’s duty reasonably to accommodate the handicapped individual.” Wheeler, 65 Wn.
19 App. at 560-61 (citing Reese v. Sears, Roebuck & Co., 107 Wn.2d 563, 579 (1987), overruled
20 on other grounds, Phillips v. Seattle, 111 Wn.2d 903 (1989)).

21 **a. Washington Court of Appeals’ Decision in Wheeler**

22 In Wheeler, the three job vacancies that the plaintiff alleged she was qualified to fill arose
23 after the termination of her employment. Id. The Court of Appeals noted that “[t]he question [of]
24 whether an employer’s duty of reasonable accommodation extends beyond the termination of
25 the employer-employee relationship, and how long it extends, ha[d] not been directly addressed
26 in Washington case law.” Id. But it found that “three Washington Supreme Court decisions
27 provide[d] ... guidance on this question.” Id. First, in Dean, the Supreme Court did not
28

1 differentiate between the employer’s duty regarding the vacancies that arose before and after the
2 plaintiff’s resignation. Id. at 562 (citing Dean, 104 Wn.2d at 637). Second, in Clarke v.
3 Shoreline Sch. Dist. 412, 106 Wn.2d 102 (1986), the Supreme Court stated in dictum that the
4 school district had an ongoing duty to accommodate the plaintiff even after his discharge. Id.
5 (citing Clarke, 106 Wn.2d at 119). Third, in Phillips v. City of Seattle, 111 Wn.2d 903 (1989),
6 the Supreme Court held that the question of whether keeping the plaintiff’s job open after his
7 discharge was an undue burden or a reasonable accommodation was a question for the jury. Id.
8 at 563 (citing Phillips, 111 Wn.2d at 911).

9 Accordingly, the Court of Appeals concluded that “the period of time the duty of
10 accommodation continues after termination should not be imposed as a matter of law. ... [I]t is
11 for the trier of fact to decide at what point continued attempts to accommodate become an undue
12 burden as opposed to a reasonable requirement.” Id. Plaintiff argues that summary judgment
13 must therefore be reversed on the issue of whether Boeing had a post-termination obligation to
14 accommodate plaintiff by identifying open positions after his termination. Given the decision in
15 Wheeler, the Court agrees.

16 **b. Timeliness of Plaintiff’s Arguments**

17 Boeing does have a meritorious argument that plaintiff could have and should have raised
18 this legal authority earlier. Dkt. #68 at 2-3. However, Wheeler also offers a different
19 interpretation of Dean, which plaintiff had originally cited in his original briefing.
20

21 In Dean, it is unclear precisely when the vacancies in question arose. The plaintiff lost
22 sight in his right eye due to disease in April 1979. Dean, 104 Wn.2d at 628. He remained an
23 employee at the Municipality of Metropolitan Seattle (“Metro”) by using up his sick leave and
24 disability and then taking leave without pay. Id. During this time, in May 1979, a vacancy arose
25 as an equipment service operator. The plaintiff was qualified for the position, but he was not told
26 about it. Id. at 629. The plaintiff resigned in December 1979. Id. at 628. In or around March
27 1980, he met with his employer’s equal employment officer. Id. at 631. He testified that the
28

1 officer “told him Metro had no policy regarding handicapped accommodation unless it involved
2 an on-the-job injury and that he would have to apply like everyone else.” *Id.* He then applied for
3 three jobs, including equipment service operator. *Id.* It is not clear what the other two positions
4 were, or when those vacancies arose. However, the Court of Appeals in *Wheeler* interpreted at
5 least two of these as arising after the plaintiff’s resignation and noted that the “[Supreme]
6 [Court] did not differentiate between the employer’s duty regarding vacancies which arose
7 *before* [the plaintiff]’s resignation and those which arose *after* it.” *Wheeler*, 65 Wn. App. 552.
8 Furthermore, the Court “favors just opinions based on the merits instead of relying on
9 procedural defaults.” *Stone v. Gov’t Employees Ins. Co.*, No. C16-5383BHS, 2016 WL
10 5938819, at *1 (W.D. Wash. Oct. 12, 2016).

11 **c. Boeing’s Discharge of Its Obligations**

12
13 Boeing also argues that it had no obligation to inform plaintiff of the salaried, non-union
14 position of crane scheduler when he had previously refused to consider a salaried, non-union
15 position. Dkt. #68 at 3. It cites to *Molloy v. City of Bellevue*, 71 Wn. App. 382 (1993), in which
16 the plaintiff declined an offer to work as a dispatcher because he was moving from Washington
17 to California. The Court of Appeals held that the City’s obligation to notify him of other
18 employment ended when he expressed his intent to move. *Molloy*, 71 Wn. App. at 392.


19 The Reassignment Process Information Form to which Boeing refers is signed by
20 plaintiff and dated October 27, 2015. *See* Dkt. #85-2 at 182-83. In answer to a request for
21 additional information, there is handwriting that says, “No salary – Cranes.” *Id.* at 182.
22 However, all five Reassignment Process Outcomes appear to have been marked, including
23 “Lateral Salaried” and “Downgrade Salaried.” *Id.* Furthermore, the portion of the form allowing
24 an employee to elect not to be reviewed for vacant salaried positions is crossed out. *Id.* at 183;
25 *see* Dkt. #69 at 3. Plaintiff also stated in his Supplemental Declaration that he never indicated
26 that he would outright refuse a salary position or a non-union position. Dkt. #44 at ¶¶ 1-2.
27 Whether plaintiff wished to be considered for a salaried, non-union position is a genuine issue of
28 material fact. *See* Fed. R. Civ. P. 56.

1 Finally, Boeing argues that plaintiff and employees like him can return to the company
2 for a six-year period following medical layoff, that it told plaintiff to continue to monitor job
3 vacancies on the Boeing Employment web page, and that it informed plaintiff that it would
4 provide him with 12 months of Post Term Application Assistance. Id. at 2-3. However, the
5 Court of Appeals held in Wheeler that an employer’s duty toward a handicapped former
6 employee is “an affirmative duty to *inform* him of job openings for which he might be
7 qualified.” Wheeler, 65 Wn. App. at 562 (citing Dean, 104 Wn.2d at 637). The question is “at
8 what point continued attempts to accommodate become an undue burden as opposed to a
9 reasonable requirement.” Id. at 563. That is for the trier of fact to decide, based on the size of the
10 employer’s business, the value of the employee’s work, whether the cost can be included in
11 planned remodeling or maintenance, the requirements of other laws and contracts, and other
12 appropriate considerations. Id. (citing WAC 162-22-080(3)).

13 **CONCLUSION**

14
15 For all the foregoing reasons, plaintiff’s motion is GRANTED IN PART. Summary
16 judgment is REVERSED as to the issue of whether or not Boeing made reasonable
17 accommodations for plaintiff in terms of informing him of vacancies that opened after he was
18 terminated. See Dkt. #61 at 9.

19 DATED this 19th day of March, 2019.

20
21 
22 Robert S. Lasnik
23 United States District Judge
24
25
26
27
28